

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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CLASSIFICATION AND FEES FOR WEIGHT-AVERAGED
NONLETTER-SIZE BUSINESS REPLY MAIL, 1999

Docket No. MC99-2

**MOTION OF THE UNITED STATES POSTAL SERVICE
REQUESTING PROTECTIVE CONDITIONS FOR WORKPAPER I
OF WITNESS LESLIE SCHENK
(March 10, 1999)**

In accordance with Rule 31a of the Rules of Practice and Procedure of the Postal Rate Commission, the United States Postal Service hereby requests that the Commission apply protective conditions which restrict participant access to and prohibit public disclosure of Workpaper I, which is filed today in camera in support of the Direct Testimony of USPS Witness Leslie Schenk (USPS-T-3).

Witness Schenk's nonletter-size Business Reply Mail cost estimates are based upon data which include the incoming BRM piece volumes received by three through-the-mail film processors which compete among themselves and against other firms in the film processing industry. Each of these firms considers its incoming BRM volume to be commercially sensitive, privileged and confidential data. Access to each BRM recipient's incoming BRM volume data has been granted by the Postal Service to witness Schenk with the explicit understanding that such data would not be publicly disclosed and would not be disclosed to any competitor of any of the BRM recipients whose data underlie her study.¹

¹ It is expected that some or all of these film processors will be among the participants in Docket No. MC99-2 and may, as in past proceedings, retain the same legal counsel and ratemaking consultant for purposes of litigation in these dockets. As was the case in Docket Nos. MC96-3 and MC97-1, it also could be
(continued...)

Without such conditional access, the Postal Service would not have been able to present the cost study which supports the proposed permanent classification and fees. Accordingly, the Postal Service has filed copies of Schenk Workpaper I with the Commission in camera.

In order for participants in this proceeding to meaningfully assist the Commission in the resolution of issues raised by the Postal Service's Docket No. MC99-2 Request and to protect from competitive and economic harm² the respective commercial interests of the nonletter-size Business Reply Mail recipients whose mail volumes provide the foundation for the cost estimates presented by witness Schenk (USPS-T-3), the Postal Service proposes that the same protective conditions which were applied in identical circumstances in Docket No. MC97-1 be applied here. Accordingly, the Postal Service invites the attention of the Commission and participants in Docket Nos. MC99-2 to Presiding Officer's Ruling No. MC97-1/1, Appendix C. (January 24, 1997). The following proposed conditions, or such other conditions as are approved by the Commission, apply to all persons seeking access to Schenk Workpaper I:

- (1) Only those persons who are either –
 - (a) employees of the Postal Rate Commission (including the Office of the Consumer Advocate) with a need-to-know; or
 - (b) participants in Postal Rate Commission Docket No. MC99-2; or

¹ (...continued)

that their Docket No. MC99-2 counsel and the consultant will be permitted access to each client's confidential incoming BRM volume data, but will be prohibited from disclosing one client's volume data to another.

² Which would result either from the public disclosure of their respective commercially sensitive, privileged, mailer-specific volume data (or information from which such volumes could be derived or inferred).

- (c) employed by such a participant, or acting as agent, consultant, contractor, affiliated person, or other representative of such participant for purposes related to the litigation of Docket No. MC99-2;

shall be granted access to Schenk Workpaper I.

- (2) Any Docket No. MC99-2 participant or person engaged in, or with an ownership or management interest in, any business which is a film processor or which is otherwise engaged in competition with District Photo, Mystic Color Lab, or Seattle Filmworks, is prohibited from obtaining access to Schenk Workpaper I.
- (3) A person who is an independent analyst, agent, consultant, contractor, or legal counsel retained on behalf of a Docket No. MC99-2 participant (otherwise disqualified from access to Schenk Workpaper I under the terms of paragraph (2) is eligible to obtain access to that Workpaper.
- (4) No person granted access to Schenk Workpaper I is permitted to disclose any mailer-specific incoming BRM volume data (or data from which such volume may be derived or inferred) from that Workpaper to
 - (a) any person engaged in or employed by, or with an ownership or management interest in, any business which is a film processor or otherwise engaged in competition with District Photo, Mystic Color Lab, or Seattle Filmworks; or
 - (b) any person not authorized to obtain access under these or other such conditions approved by the Commission;
- (5) The final date of any participant's access shall be
 - (a) the date on which the Postal Rate Commission closes the evidentiary record in Docket No. MC99-2;
 - (b) the date on which that participant formally withdraws from Docket No. MC99-2, or

- (c) the date on which the person who obtains access is under contract or retained or otherwise affiliated with the Docket No. MC99-2 participant on whose behalf that person obtains access;

whichever comes first. The participant immediately shall notify the Postal Rate Commission and United States Postal Service counsel in Docket No. MC99-2 of the termination of any such business and consulting arrangement or retainer or affiliation which occurs before the closing of the evidentiary record in the case in which the participant is engaged.

- (6) Immediately after the final date of access, a participant (and any person working on behalf of that participant) who has obtained a copy of Schenk Workpaper I shall certify to the Commission in Docket No. MC99-2:
 - (a) that the copy was maintained in accordance with these conditions (or others established by the Commission); and
 - (b) that the copy (and any duplicates) either have been destroyed or mailed to the undersigned counsel.
- (7) The duties of any persons obtaining access to Schenk Workpaper I shall apply to data disclosed or duplicated in writing, orally, electronically or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of documents or files, as well as to fully disclosed documents or files.
- (8) All persons who obtains access to Schenk Workpaper I are required to protect any volume data (or information from which such volumes may be derived or inferred) by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these data as those persons, in the ordinary course of business, would be expected to use to protect their own trade secrets and other internal, confidential, commercially-sensitive, and privileged data.

(9) These conditions shall apply to any revised, amended, or supplemental versions of Schenk Workpaper filed in Docket No. MC99-2.

(10) Any Docket No. MC99-2 participant or other person seeking access to Schenk Workpaper I, by requesting access, consents to these or such other conditions as the Commission may approve.


Upon the approval of these or similar conditions by the Commission, arrangement can be made by participants in this proceeding, or persons acting on their behalf, to obtain copies of Schenk Workpaper I through undersigned counsel.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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March 10, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have attached a copy of this Motion to all copies of the Request being distributed to parties upon notice to the Postal Service of intervention in Docket No. MC99-2.



Michael T. Tidwell

March 10, 1999